In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. Nos.30586-87 of 2007
and
Criminal Misc. No.38392-M of 2006

.....

Date of decision:16.5.2007

Rekha Sethi and others

.....Petitioners

v.

Deepak Chadha

.....Respondent

....

Present: Mr. S.S. Bains, Advocate for the petitioners.

Mr. Sandeep K. Wadhawan, Advocate for the respondent.

.....

S.S. Saron, J. (Oral)

Cr.M. No.30586-87/2007:

Notice of the criminal miscellaneous to counsel for the non-applicant.

Mr. Sandeep K. Wadhawan, Advocate for the respondent accepts notice.

Copies of the news items dated 30.5.2000 (Annexure-P.7) published in the Dainik Tribune and dated 7.6.2003 (Annexure-P.8) published in the Dainik Bhaskar attached with the criminal miscellaneous application are taken on record.

The criminal miscellaneous stand disposed of.

Cr.M. No.38392-M/2006:

The petitioners, Rekha Sethi and her father H.L. Sethi, mother

Uma Sethi and brother Rakesh Sethi have filed this petition under Section 482 of the Code of Criminal Procedure (`Cr.P.C.' - for short) for quashing the complaint dated 26.9.2000 (Annexure-P.1) titled Deepak Chadha v. Rekha Sethi and others pending in the Court of learned Judicial Magistrate Ist Class, Chandigarh and the summoning order dated 25.3.2005 (Annexure-P.2) passed by the learned Judicial Magistrate Ist Class, Chandigarh and all proceedings arising out of the said complaint. The petitioners have been summoned in pursuance of the impugned order dated 25.3.2005 (Annexure-P.2) for the offences under Sections 499 and 500 of the Indian Penal Code (`IPC' – for short).

Rekha Sethi (petitioner No.1) was married to the complainant Deepak Chadha (respondent) on 18.2.1999. During their marriage a matrimonial dispute arose between them. The petitioner Rekha Sethi on 24.10.2000 filed a petition under Section 13 of the Hindu Marriage Act, 1955 (`Act' – for short) for the grant of a decree for divorce on the ground that the complainant (respondent) after the solemnization of his marriage with the petitioner Rekha Sethi had voluntary sexual intercourse with respondent No.2 in the petition for divorce. The dissolution of the marriage was sought on the ground of adultery. The learned District Judge after considering the evidence and material on record accepted the petition of Rekha Sethi vide order dated 11.9.2002 (Annexure-P.3) and the marriage between the petitioner Rekha Sethi and the complainant Deepak Chadha was dissolved by a decree of divorce. Aggrieved against the said order the complainant (respondent) filed an appeal i.e. FAO No.250-M of 2002 in this Court. A Division Bench of this Court after notice of motion and

hearing counsel for the parties dismissed the appeal on 11.3.2003 (Annexure-P.4). Consequently the marriage between the petitioner Rekha Sethi and the complainant Deepak Chadha stands dissolved. Before the passing of the said judgment and decree dissolving the marriage, the respondent Deepak Chadha had filed a complaint dated 26.9.2000 (Annexure-P.1) for summoning and convicting the petitioners and others for having committed an offence of defamation punishable under Section 500 IPC. It has been alleged in the complaint (Annexure-P.1) that the complainant was legally married with Rekha Sethi (accused No.1) on 18.2.1999 at Ludhiana and accused No.2 to 4 in the said complaint (Annexure-P.1) are the father, mother and brother respectively of Rekha Sethi (accused No.1). Accused No.5 and 6 are the maternal uncle and aunt of accused No.1. Accused No.7 to 11 are the editors, publishers and correspondents of Dainik Tribune and Dainik Bhaskar newspapers. It is alleged that on 27.5.2000 when the complainant had gone out of station for business purposes, in his absence with the connivance of Rekha Sethi (accused No.1), accused No.2 to 6 took forcible possession of the house of the complainant and also threatened his mother for not taking any legal action against accused No.1 to 6. Accused No.1 to 6 on 29.5.2000 lodged false complaint which has been registered by way of DDR No.37 dated 29.5.2000 against the complainant Deepak Chadha only to harass and pressurize him. Moreover, accused No.1 to 6 also had badly beaten the mother of the complainant and locked her in a room. Apart from other allegations made in the complaint it has been alleged that accused No.1 to 6 in connivance with accused No.7 to 11 published many false and nefarious

matters against the complainant and his mother. It is submitted that Rekha Sethi (accused No.1) clearly made the allegation that the complainant was already married with another woman which defamed the clean and clear image of the complainant and his mother in the society by publishing the same without going through the true facts of the story. Accused No.7 to 9 had published the news item in the newspaper dated 30.5.2000 under the title "DO MASOOM ZINDAGIYON SE KHELNE WALA POLICE KI GIRAFT ME". Besides, accused No.10 and 11 had published the news item in the newspaper dated 6.6.2000 under the title "DHOKE KE BAAD SOUTAUNO NEY PATI KE KHILAF MORCHA KHOLA". The said news items were printed in the manner to attract the attention of the general public. With the publication of the above news items, it is alleged that the complainant had become a laughing stock. It has also been alleged that the publication of the news items had lowered the esteem, reputation and value of the complainant (respondent) in the eyes of the society, close relatives, friends and the public at large. It is alleged that the complainant was contacted on telephone by number of his close friends and relatives on 30.5.2000 and 6.6.2000 after reading the news items and they rebuked the complainant for his alleged act. It is stated that the complainant on 9.6.2000 denied the charges of bigamy levelled against him by accused No.7 to 11 in connivance with accused No.1 to 6. The complainant published a clarification notice in the newspaper `The Tribune' that he was innocent and had nothing to do with the commission of the said offence. The copies of the newspapers and affidavit have also been attached with the complaint. On the basis of the complaint, the learned Judicial Magistrate Ist Class,

Chandigarh vide order dated 25.3.2005 (Annexure-P.2) has summoned the accused No.1 to 4 and accused No.7 to 11 in the complaint. As far as accused No.5 and 6 are concerned it was observed that they had not been named by the witness and there was no direct allegations against them that they were instrumental in getting the publication effected against the complainant. Besides, both of them are residents of Gurdaspur. The said complaint (Annexure-P.1) and summoning order (Annexure-P.2), as already noticed, are assailed by the petitioners.

Learned counsel appearing for the petitioners has submitted that the initiation of the complaint under Sections 499 and 500 IPC is an abuse of the process of the Court. It is submitted that no material has been placed on record to show that the petitioners were, in any manner, instrumental in the publication of the news items (Annexures-P.7 and P.8). It is further submitted that, in any case, the marriage between the petitioner Rekha Sethi and the complainant Deepak Chadha has been dissolved by a decree of divorce passed by the learned District Judge, Chandigarh on 11.9.2002 (Annexure-P.3). The said order of the learned District Judge has also been upheld by a Division Bench of this Court on 11.3.2003 (Annexure-P.4). Therefore, it is submitted that the proceedings under Sections 499 and 500 IPC qua the petitioners are liable to be quashed.

Learned counsel appearing for the respondent has vehemently opposed the petition for quashing the complaint (Annexure-P.1) and the summoning order (Annexure-P.2). It is submitted that the primary reliance that has been placed by the petitioners is on the order of the matrimonial Court passed by the District Judge on 11.9.2002 (Annexure-P.3) which has

been affirmed by this Court on 11.3.2003 (Annexure-P.4). The said orders, it is contended, were not in existence when the complaint was filed on 26.9.2000. Therefore, it is submitted that the position as it existed on the said date at the time of filing the complaint is to be taken into consideration and the petitioners cannot take any advantage of the orders that have been passed subsequently.

I have given my thoughtful consideration to the matter and perused the record. As has already been noticed the marriage between the petitioner Rekha Sethi and the complainant Deepak Chadha was solemnized on 18.2.1999 at Ludhiana. After marriage they cohabited as husband and wife at Chandigarh. The petitioner Rekha Sethi on account of the matrimonial dispute that arose between the parties filed a petition under Section 13 of the Act pleading that the complainant Deepak Chadha after solemnization of his marriage with her had voluntary sexual intercourse with respondent No.2 in the petition seeking divorce. It was also pleaded that the complainant had not showed any love and affection for petitioner No.1 and rather he and his family members had taunted her for bringing insufficient dowry. Besides, she was treated with cruelty. The allegations as made by the petitioner Rekha Sethi in the petition for dissolution of marriage were denied by the complainant. The same were also denied by respondent No.2 to the divorce petition. The learned District Judge had inter alia framed issues as to whether the complainant had voluntary sexual intercourse with respondent No.2 to the divorce petition and whether he had treated the petitioner Rekha Sethi with cruelty. After consideration of the evidence in detail both the issues were decided in favour of petitioner No.1.

Respondent No.2 in the divorce petition had also appeared in the witness box as RW-8. She admitted that she had visited the house of Deepak Chadha complainant when she was called by the petitioner Rekha Sethi. She was confronted with the various photographs and she denied her presence in those photographs. The learned District Judge after comparing the photographs with her observed that she had intentionally denied her photographs. In fact, the photographs comparable with RW-8, it was observed that it was crystal clear that the photographs pertain to her. The adulterous relationship was held to be proved after the marriage. The said order has been upheld by a Division Bench of this Court on 11.3.2003 (Annexure-P.4) passed in FAO No.250-M of 2002. It was observed by their Lordships of the Division Bench that they had gone through the judgment passed by the learned District Judge and also perused the photographs which were exhibited during the trial. Their Lordships did not find any infirmity or illegality in the findings recorded by the learned District Judge on the aforesaid two grounds. It was observed that the learned trial Court had considered each and every material placed on record by both the parties and thereafter it came to the aforesaid conclusion. Besides, learned counsel for the appellant i.e. complainant Deepak Chadha could not convince their Lordships to take a different view than that taken by the learned District Judge.

The fact that the aforesaid judgments had been passed after the filing of the complaint on 26.9.2000, in my view, is hardly of any significance. The said judgments are that of a matrimonial Court and are judgments in rem in terms of Section 41 of the Indian Evidence Act, 1872.

Section 41 of the Evidence Act relates to relevancy of certain judgments in probate etc. jurisdiction. It is provided therein that a final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title or any such person to any such thing, is relevant. Besides, such judgment, order or decree is conclusive proof that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation; that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person. Section 41 of the Evidence Act relates to judgments that are known as judgments in rem. It admits judgment in rem as evidence in subsequent proceedings, where the determination or the existence of the right is a matter in issue between the same parties. A judgment in rem is conclusive against the world as to the status of the respondent. The judgment and decree dated 11.3.2003 (Annexure-P.4) passed by this Court in FAO No.250-M of 2002 dismissing the appeal of the present respondent is a judgment passed in the exercise of matrimonial jurisdiction and is final by which status of the parties i.e. petitioner No.1 and the respondent has been determined by dissolving the marriage on the ground of adultery on the part of the respondent. In terms of the judgment and decree of the matrimonial Court it has been established that the respondent had been

living in adultery and the marriage between the petitioner No.1 and the respondent has been dissolved by a decree of divorce. The same is conclusive proof that the complainant (respondent) was married to petitioner No.1 and during subsistence of the marriage the respondent committed the act of adultery. Therefore, the judgment in rem can be taken into consideration in the present case for the purpose of consideration for quashing of the complaint (Annexure-P.1) and the summoning order (Annexure-P.2). Keeping in view the judgments and decree of the matrimonial Court which determine the status and rights of the parties, the complaint (Annexure-P.1) and the summoning order (Annexure-P.2) are liable to be quashed.

Even otherwise it is appropriate to note that no material has been placed on record to show that the petitioners were instrumental in the publication of the news items Annexures-P.7 and P.8. The only evidence that has been referred to by the learned counsel for the respondent is that of respondent No.2 in the divorce petition, who appeared as CW-2, in the present complaint case. Her statement was recorded on 12.10.2001. A perusal of the said statement would show that she has stated that no marriage ceremony was performed between her and Deepak Chadha. It is stated that on 29.5.2000 Rekha Sethi petitioner No.1 along with her father, mother and other relatives came to her house and forced her to sign many blank documents and blank affidavits also. All the accused persons pushed her at Sector 23, Chandigarh to the residence of Deepak Chadha. There she was beaten and threatened that if she did not admit the allegations levelled against her by them they would ruin her life. It is stated that she did not

give any statement before the Police officials, news reporters and other people who were present in the house of Deepak Chadha. She never saw any person related to newspapers or Istri Sabhas also. She only came to know on 30.5.2000 through the `Dainik Tribune' vide which the defamatory language had been published against her and Deepak Chadha on the instance of Rekha Sethi and her family members. After that she met Ramesh Handa, Correspondent, `Dainik Tribune', Chandigarh regarding this illegal act but he did not pay any heed. Again on 6.6.2000 the `Dainik Bhaskar' also published the defamatory language against her and Deepak Chadha on the instance of Rekha Sethi and her family members without her consent and he also refused to accept her statement. Therefore, it is only her assertion that the offending news items were published at the instance of Rekha Sethi (petitioner No.1). However, the said evidence is in the nature of hearsay evidence. The learned Judicial Magistrate Ist Class, Chandigarh in terms of his impugned order dated 23.5.2005 (Annexure-P.2) has not referred to any evidence which would show that the petitioners were instrumental in getting the news items published. It has been observed that Deepak Chadha had stated on oath that he was not married with respondent No.2 in the divorce petition but nothing has been adverted to show that the publication of the news items was at the instance of the petitioners. In the circumstances, it may be noticed that the dispute between the parties has been a matrimonial one, which has culminated in the decree of divorce being passed. The continuation of the present complaint against the petitioners that they had got the news items published is not borne out from any record. At the best it is based on mere hearsay evidence.

Consequently, the impugned complaint (Annexure-P.1) and summoning order (Annexure-P.2) insofar as the petitioners are concerned are liable to be quashed.

Accordingly, the criminal miscellaneous petition is allowed and the complaint dated 26.9.2000 (Annexure-P.1) and the summoning order dated 25.3.2005 (Annexure-P.2) qua the petitioners shall stand quashed. It is, however, made clear that any observations made in the present order shall not, in any manner, affect any other case in which the respondent is involved.

May 16, 2007. **(S.S. Saron)**
Judge

hsp